

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

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REGULATORY AUTH.
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OFFICE OF THE
EXECUTIVE SECRETARY

IN RE:)	
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JOINT APPLICATION OF THE CITY OF)	
KINGSPORT AND TENGASCO PIPELINE)	
CORPORATION FOR APPROVAL OF)	Docket No. 00-00537
CITY RESOLUTION AND CITY)	
ORDINANCE)	
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**United Cities Gas Company's Reply to the
Joint Response of the City of Kingsport and TENGASCO Pipeline Corporation to
United Cities Gas Company's Petition to Intervene and Application for Public Hearing
Submitted July 31, 2000**

On July 7, 2000, Petitioner United Cities Gas Company requested, pursuant to Tenn. Code Ann. § 4-5-310, that it be allowed to intervene as an interested party in this proceeding (Docket No. 00-00537), and that a public hearing be held before any action is taken on the June 22, 2000 Joint Application of the City of Kingsport and TENGASCO Pipeline Corporation ("TPC") for Approval of City Resolution and City Ordinance.

On July 17, 2000, TPC and the City of Kingsport filed a Joint Response asking that United Cities' petition to intervene be denied. As more specifically discussed below, United Cities has demonstrated that it meets the statutory qualifications as an intervenor and should be allowed to fully participate in this proceeding. Therefore, United Cities' petition to intervene should be granted.

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I. The City of Kingsport Resolution and Ordinance Does Not Render the Certificate Proceedings Provided for in Tenn. Code Ann. §§ 65-4-201 -- 206 Wholly Inapplicable.

In their joint response to United Cities' petition to intervene, TPC and the City of Kingsport state that despite the broadly worded allegations in their original joint application, TPC is not seeking authority to serve customers throughout Sullivan County, but is only requesting a certificate of public convenience and necessity allowing it to serve customers within the City of Kingsport. TPC and the City of Kingsport claim that because their application seeks a certificate in an area where TPC has already negotiated a franchise, according to Tenn. Code Ann. § 65-4-207, the certificate provisions of Tenn. Code Ann. §§ 65-4-201 -- 206 do not apply. Instead, TPC and the City claim that the franchise approval statute, Tenn. Code Ann. § 65-4-107, is the only applicable provision governing this proceeding. Therefore, TPC claims that because the certificate provisions are inapplicable, United Cities has no right to intervene in this proceeding. As more thoroughly discussed below, TPC's interpretation of the meaning and effect of the relevant statutes is incorrect.

Part 2 of title 65, chapter 4 of the Tennessee Code contains the provisions regarding certificates of public convenience and necessity. The final section in that part, Tenn. Code Ann. § 65-4-207 states that:

The provisions of this part do not apply where any municipality or county by resolution or ordinance declares that a public necessity requires a competing company in that municipality or county.

TPC and the City of Kingsport contend that Kingsport Resolution No. 2000-092 and Kingsport Ordinance No. 4776, which were attached as exhibits to their joint application, declare that a public necessity requires a competing company within the City of Kingsport, rendering the certificate provisions inapplicable under § 65-4-207. However, a close examination of the Kingsport

resolution and ordinance reveals a much narrower intent and resulting effect. The resolution does **not** declare that public necessity requires a competing natural gas pipeline company to serve all customers throughout the City of Kingsport. Specifically, the resolution provides:

That a public necessity requires a competing natural gas pipeline company in the City of Kingsport for the transportation of natural gas **produced in the State of Tennessee to large volume industrial customers** including Eastman Chemical Company **in accordance with T.C.A. § 65-28-103.**

That the public necessity requires that TENGASCO Pipeline Corporation construct within the city limits of Kingsport those pipeline facilities required to transport natural gas **produced in Tennessee to large volume industrial customers** such as Eastman Chemical Company **in accordance with the Pilot Program contained in T.C.A. § 65-28-103** and such construction is approved.

Resolution No. 2000-092 at p. 2 (emphasis added). The resolution clearly finds that a public necessity exists only with respect to a very specific situation, and approves construction of a pipeline in Kingsport if three conditions are met: (1) if the pipeline is for the purpose of transporting intrastate natural gas; (2) to large volume industrial customers in Kingsport; (3) in accordance with the Pilot Program contained in Tenn. Code Ann. § 65-28-103. The ordinance makes no additional finding of public necessity whatsoever, but purports to give TPC the right to build a pipeline in Kingsport for the purpose of transporting natural gas, from both interstate and intrastate sources, to any residential or industrial customer within the City of Kingsport or any other adjacent area. The only finding of public necessity made by the City of Kingsport relates solely to the construction of a pipeline in Kingsport exclusively for the purpose of transporting intrastate natural gas to large volume industrial customers in Kingsport in accordance with the Pilot Program in Tenn. Code Ann.

§ 65-28-103. Therefore, the only portion of TPC's application that is exempt, under Tenn. Code Ann. § 65-24-207, from the certificate provisions, is that portion of TPC's application which seeks authority to build a pipeline in Kingsport to transport intrastate natural gas to Kingsport's large volume industrial customers in accordance with the Pilot Program. The remainder of TPC's application, which seeks authority to use the Kingsport pipeline to transport both interstate and intrastate gas to Kingsport residential customers and to large volume industrial users in surrounding areas, cannot be approved without complying with the certificate provisions in Tenn. Code Ann. § 65-4-201 -- 206. Those provisions specifically recognize that the interests of United Cities, as a natural gas company currently serving Kingsport and the surrounding areas, may be affected by this proceeding, and explicitly allow United Cities to intervene and participate fully in all aspects of this case. See Tenn. Code Ann. § 65-4-202 (allowing public utilities to petition the TRA for a hearing and other relief when another utility is about to interfere with its existing line or system); Tenn. Code Ann. § 65-4-203 (requiring the TRA to provide notice to all utilities operating within an area affected by a request for a certificate of public convenience and necessity); Tenn. Code Ann. § 65-4-204 (requiring the TRA to order a public hearing upon written application of any party in interest). As such, United Cities' petition to intervene should be granted.

II. Tenn. Code Ann. § 65-4-107 Requires That a Public Hearing Be Held To Determine Whether TPC's Kingsport Franchise Is Necessary And Proper For the Public Convenience and Necessity, and United Cities Is Entitled to Intervene and Participate in That Hearing.

TPC and the City of Kingsport contend that this proceeding is governed solely by Tenn. Code Ann. § 65-4-107, and that under that statutory procedure, United Cities has no right to

intervene. Even assuming that the certificate provisions in Tenn. Code Ann. §§ 65-4-201 -- 206 do not apply to this proceeding and instead this proceeding is governed solely by Tenn. Code Ann. § 65-4-107, which United Cities contends is incorrect, a hearing must nevertheless be held. At that hearing, the TRA must ascertain the precise scope of the Kingsport ordinance and resolution, and determine whether the franchise granted by the City of Kingsport is required by public convenience and necessity, and what limitations or conditions, if any, should be placed on that franchise. Furthermore, United Cities is entitled to intervene and fully participate in the proceedings regarding that determination. Tenn. Code Ann. § 65-4-107, entitled "approval of privilege or franchise," provides in relevant part:

No privilege or franchise hereafter granted to any public utility by the state of Tennessee or by any political subdivision thereof shall be valid until approved by the authority, such approval to be given when, after hearing, the authority determines that such privilege or franchise is necessary or proper for the public convenience and properly conserves the public interest, and the authority shall have the power, if it so approves, to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require

This statute clearly requires that a hearing be held to determine whether the Kingsport franchise granted to TPC is necessary or proper for the public convenience and necessity, and whether the franchise should be limited or narrowed in any way. United Cities is currently serving Kingsport and the surrounding areas, and therefore, will be directly affected by the determination made in this hearing. The standards for intervention in a hearing or other proceeding before the TRA are contained within Tenn. Code Ann. § 4-5-310, which provides:

The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

- (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of hearing, at least seven (7) days before the hearing;
- (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
- (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

As thoroughly set forth in its petition to intervene, United Cities is currently the only natural gas company serving the City of Kingsport and the surrounding areas. Therefore, United Cities' rights, duties and privileges with respect to providing that service will be determined as a result of the final decision regarding approval and scope of TPC's proposed franchise. United Cities' petition to intervene was filed a mere two weeks after TPC and the City of Kingsport's joint application, and was served on all interested parties. Furthermore, no hearing date has yet been set, nor have any further pleadings or evidence been filed. Therefore, United Cities has complied with the statutory prerequisites for intervention: (1) United Cities has demonstrated that its legal interests, rights, duties and privileges may be determined in this proceeding; (2) United Cities has submitted a timely written petition, with copies to all parties; and (3) because no hearing date has been set and no other pleadings filed, the orderly and prompt conduct of this proceeding will not be impaired by allowing United Cities to intervene. As such, United Cities qualifies as an intervenor, and its petition to

intervene must be granted and United Cities permitted to participate fully in all proceedings relative to Docket No. 00-00537.

Respectfully submitted

BAKER, DONELSON, BEARMAN &
CALDWELL, P.C.

By:

A handwritten signature in black ink, appearing to read "Joe A. Conner", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed, postage prepaid, to the following parties this the 31st day of July, 2000:

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Attorney for United Cities Gas Company

PROPOSED

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:

JOINT APPLICATION OF THE CITY OF
KINGSPORT AND TENGASCO PIPELINE
CORPORATION FOR APPROVAL OF
CITY RESOLUTION AND CITY
ORDINANCE

PROPOSED

Docket No. 00-00537

PROPOSED

ORDER GRANTING UNITED CITIES GAS COMPANY PERMISSION TO
INTERVENE IN DOCKET NO. 00-00537

This matter comes before the Tennessee Regulatory Authority on the Petition to Intervene and Application for Public Hearing filed by United Cities Gas Company ("United Cities") on July 7, 2000. In that Petition, United Cities requested permission to intervene and participate fully in all proceedings in Docket No. 00-00537, which is the docket number assigned to the Joint Application of the City of Kingsport and Tengasco Pipeline Corporation for Approval of City Resolution and City Ordinance.

The Tennessee Regulatory Authority finds that the Petition filed by United Cities is timely and satisfactorily demonstrates that United Cities meets the qualifications for intervention set forth in Tenn. Code Ann. § 4-5-310. As such, United Cities' Petition to Intervene and Application for Public Hearing is hereby GRANTED.

IT IS THEREFORE ORDERED THAT United Cities be made a party to Docket No. 00-00537, and be entitled to participate fully in all proceedings.

[signatures on following page]

PROPOSED

CHAIRMAN

DIRECTOR

DIRECTOR

TEST:

EXECUTIVE SECRETARY

PROPOSED